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IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of Reserve: July 02, 2009
Date of Order: July 06, 2009

+ EA Nos. 471-72 of 2008 in Ex.P.No.231/2006

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Union of India

Through: Mr. J.M. Kalra, Advocate

06.07.2009

...Decree Holder

Versus

Binod Engineering & Mechanical Works

...Judgment Debtor

Through: Mr. Chetan Sharma, Sr. Adv. with Mr. D. Moitra, Advocates

JUSTICE SHIV NARAYAN DHINGRA

1. Whether reporters of local papers may be allowed to see the judgment?
2. To be referred to the reporter or not?
3. Whether judgment should be reported in Digest?

ORDER

EA Nos. 471-72 of 2008

1. The decree holder had filed this execution petition with a prayer that the execution be transferred to High Court of Calcutta since to the knowledge of decree holder, Judgment Debtor firm and its partners do not have any property within the local limits of Delhi Court. The JD were working for gain in Kolkata and have been residing in Kolkata.

2. Notice of this execution petition was served upon the JD and JD put appearance in this execution on 12th January 2007, 1st February 2007 and 17th April 2007. Thereafter vide order dated 17th April 2007, the decree was transferred to Calcutta High Court. On another application made by decree

holder, the order was reiterated and Registry was directed to issue fresh transfer certificate transferring the decree for execution to Calcutta High Court.

3. Now JD has moved above two applications raising objections under Order 21 Rule 26 and under Section 47 of CPC. Order 21 Rule 26 and Sections 47 CPC read as under:

“Order 21 Rule 26. When Court may stay execution.”-(1) The Court to which a decree has been sent for execution shall, upon sufficient cause being shown, stay the execution of such decree for a reasonable time, to enable the judgment-debtor to apply to the Court by which the decree was passed, or to any Court having appellate jurisdiction in respect of the decree or the execution thereof, for an order to stay execution, or any other order relating to the decree or execution which might have been made by such Court of first instance or Appellate Court if execution had been issued thereby, or if application for execution had been made thereto.”

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“Section 47. Questions to be determined by the Court executing decree.”- (1) All questions arising between the parties to the suit in which the decree was passed, or their representative, and relating to the execution, discharge or satisfaction of the decree, shall be determined by the Court executing the decree and not by a separate suit.

(3) Where a question arises as to whether any

*person is or is not the representative of a party ,
such question shall, for the purposes of this section,
be determined by the Court."*

4. It is obvious that objections can be decided only by the Court executing the decree and not by another court. Order 21 Rule 26 makes it clear that court to which a decree has been sent for execution only, upon sufficient cause being shown, stay the execution of such decree for a reasonable time. Since this Court had sent this decree to Calcutta Court for execution and is no longer seized with the execution of this decree, this Court became functus officio and cannot entertain an application either under Section 47 of CPC or under Order 21 Rule 26 of CPC.

5. Keeping in view the above facts, both the applications are hereby dismissed having been filed before the Court not having jurisdiction. However, applicant would be at liberty to appropriate applications before the Calcutta Court, where the execution stands transferred.

6. With above order, both the applications stand disposed of.

July 06, 2009
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SHIV NARAYAN DHINGRA J.